

153  
**BRISTOL BAY FISHERIES PROTECTION ACT**

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**HEARING**

----- THE

Y 4.M 53:103-29

NOGRAPHY, GULF OF  
CONTINENTAL SHELF

Bristol Bay Fisheries Protection Act... :

**COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES**

**ONE HUNDRED THIRD CONGRESS**

**FIRST SESSION**

**ON**

**H.R. 705**

**A BILL TO PROTECT THE FISHERIES OF BRISTOL BAY,  
ALASKA, BY PURCHASING CERTAIN OIL LEASES, AND  
FOR OTHER PURPOSES**

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**JUNE 15, 1993**  
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**Serial No. 103-29**  
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Printed for the use of the Committee on Merchant Marine and Fisheries



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# THE BRISTOL BAY FISHERIES PROTECTION ACT

TUESDAY, JUNE 15, 1993

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO, AND THE OUTER CONTINENTAL SHELF, COMMITTEE ON MERCHANT MARINE AND FISHERIES,

*Washington, DC.*

The subcommittee met, pursuant to call, at 10:00 a.m., in room 1334, Longworth House Office Building, Hon. Solomon P. Ortiz [chairman of the subcommittee] presiding.

Present: Representatives Ortiz, Green, and Weldon.

Staff Present: Jeffrey Pike, Staff Director; Thomas R. Kitsos, Senior Policy Analyst; Cynthia M. Wilkinson, Minority Chief Counsel; Suzanne J. Waldron, Press Secretary; Robert Wharton, Terry Schaff, and Greg Gould, Professional Staff; Eunice Groark and David S. Whaley, Minority Professional Staff; and John Aguirre, clerk.

## OPENING STATEMENT OF HON. SOLOMON P. ORTIZ, A U.S. REPRESENTATIVE FROM TEXAS, AND CHAIRMAN, SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO, AND THE OUTER CONTINENTAL SHELF

Mr. ORTIZ. Good morning. This hearing will come to order.

I would like to welcome you this morning on behalf of the Subcommittee on Oceanography, Gulf of Mexico, and the Outer Continental Shelf. Today, the Subcommittee meets to examine H.R. 705, the Bristol Bay Fisheries Protection Act, which was introduced by Representative Don Young, who was apparently taken ill this morning and won't be able to be here this morning.

In September 1985, the Federal Government proposed to offer tracts for oil and gas development in the North Aleutian Basin Planning Area. Following extended legal battles between the Federal Government and local interests over the matter, a sale was held in October 1988 and the Federal Government accepted over \$95 million in bonus bids for 23 tracts in Bristol Bay.

However, in October 1989, as a result of continuing concern over the impacts that oil and gas development might have on the fisheries and other natural resources of the basin, Congress imposed a moratorium on leasing and drilling within the entire planning area, including the 23 leases issued as a result of the sale. This moratorium has continued through fiscal year 1993.

H.R. 705 proposes to restrict pre-leasing activity in the North Aleutian Basin Planning Area until the year 2002, and to cancel all active leases in the area. The bill also authorizes the Depart-

ment of Interior to compensate leaseholders in the form of currency or forgiveness of the lessee's obligations to pay rents or royalties on other leases.

With this hearing, the subcommittee is beginning its review of the Nation's offshore oil and gas program. The purpose of this hearing today is to examine the buyback of the Bristol Bay leases, as well as the bigger issue of lease buybacks nationwide and the impact that his legislation may have on the Outer Continental Shelf Lands Act.

We had invited the Minerals Management Service and the Department of Justice to join us today to discuss the impact of this legislation on the offshore oil and gas program. Unfortunately, both agencies declined to testify due to a pending lawsuit brought by a number of oil companies holding leases which are under congressional moratoria, including those in the Bristol Bay area.

The fact that both of these agencies, in particular, the Minerals Management Service, are unable to testify, shows how complicated this issue has become, and indicates that the entire process, as it is now set up, may need review.

Mr. ORTIZ. We will insert the statement of my good friend Jack Fields for the record; Mr. Weldon's statement for the record, he is having problems with his vehicle this morning; and Mr. Young's statement for the record and his questions.

[The statement of Mr. Fields follows:]

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, I am pleased that you are holding this hearing because the issue of lease buybacks is important to the future of the Federal Government's Outer Continental Shelf leasing program.

While I understand the interest in protecting sensitive lands and important fishing areas, this Subcommittee is well aware of the envious safety record that the offshore oil and gas industry has in this country. The OCS industry has operated for decades and has a superb record of protecting the environment. Let me also remind the Subcommittee that when the Bristol Bay planning area was included in the Department of the Interior's 5-Year Leasing Program, the amount of acreage eligible to be leased was reduced by the Department 83 percent in response to concerns expressed by the Governor of Alaska.

Mr. Chairman, I am also concerned about the precedent that would be set if these leases were canceled and repurchased by the Federal Government. This precedent would tell companies interested in developing lands offshore that even if they obtain a lease and make a good-faith effort to comply with all of the necessary regulations, they may be prohibited from ever developing this property.

This fear is one of the primary reasons why recent lease sales have produced considerably less interest and revenues for the Federal Government, and this is why domestic companies are leaving the U.S. to explore overseas.

If the Federal Government decides to cancel these or other leases, it is my firm belief that those companies which bought the leases through the open, competitive bid process should be fully compensated. These companies should be compensated not only for their bonus bids, interest, and rental payments, but also for the cost of exploring those lands. If the Federal Government is going to be an unreliable partner, then it must pay for the right to unilaterally abrogate those contacts.

It is also important to note that there are other sectors of the energy industry that will be penalized if the Federal Government begins to cancel and buy back leases. Numerous seismic companies, supply boat operators, drilling contractors, and other service industries are dependent on existing leases being developed. In the case of seismic companies, they may have spent substantial amounts of money collecting data following a lease sale. If the lease is then canceled, the data becomes useless and there is no provision for these companies to recover their costs.



Putting aside the fact that the Federal Government is breaking its promise to the companies which purchased the leases, this type of buyback sends the worst possible signal to companies thinking about investing in our offshore exploration and development program.

Finally, Mr. Chairman, I am concerned about the potential cost of these lease buybacks to the Federal Government. Thank you.

[The statement of Mr. Weldon follows:]

STATEMENT OF HON. CURT WELDON, A U.S. REPRESENTATIVE FROM PENNSYLVANIA

Mr. Chairman, I would like to thank you for holding this hearing today. I look forward to hearing from our witnesses on protecting the fisheries of Bristol Bay, including H.R. 705, the Bristol Bay Fisheries Protection Act.

In particular, I would like to commend my colleague from Alaska, Congressman Young, for introducing H.R. 705. This legislation would protect the fisheries of Bristol Bay, Alaska, by restricting pre-leasing activity in the North Aleutian Basin planning area until the year 2002. It would also cancel all other existing leases in the area.

While I have never personally visited Bristol Bay, it is my understanding that the fisheries in the North Aleutian Basin are among the most economically productive in the U.S. Furthermore, areas to the north and south of the basin also support large concentrations of marine coastal birds.

As I am sure many of you know, the issue of lease buyback has been discussed for several years. However, the case in Bristol Bay is of particular importance because of the potential precedent that could be set if this situation was to be resolved. Currently, twelve oil companies have filed a suit requiring that the Federal Government buy back the leases in Bristol Bay, off North Carolina and off Florida. In each area, oil and gas activity has been suspended due to a Federal moratoria prohibiting these activities. While the Federal Government has denied that a "taking" has taken place, the oil industry argues that this is not the case. The outcome of this case will surely establish a precedent for future incidents. I look forward to examining this matter in greater detail at today's hearing.

An issue that I also feel should be discussed today is, who is responsible for repurchasing these leases? Should it be the Federal Government? Or are there some instances in which the States should contribute to buying back existing leases? For example, if a State should raise concerns regarding a lease sale after adequate environmental impact statements are completed, which indicates that oil and gas activity would not adversely impact the surrounding marine life, then should the State contribute to the buyback because they raised specific objections?

Also, it is important that we understand what type of threat OCS oil and gas drilling activity poses to marine life. This should include examining efforts currently underway to protect the marine environment from an oil spill. This is essential in ensuring that these activities do not harm existing fisheries or marine life in a specific area.

While all of these issues may not necessarily be addressed at today's hearing, I do feel that they should be discussed at some point. It is my understanding that this is the first in a series of OCS oil and gas drilling hearings that this Subcommittee will be hosting. I commend you, Mr. Chairman, for taking the lead on such an important matter.

Finally, it is my understanding that neither the Minerals Management Service nor the Justice Department could testify today. I find that to be unfortunate. I do, however, look forward to hearing from our witnesses.

Again, Mr. Chairman, thank you for holding this hearing. I look forward to working with you and the other members of the Subcommittee on these matters in the upcoming months.

[The statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE FROM ALASKA

Mr. Chairman, I want to express my thanks and the thanks of the people of Alaska for agreeing to hold this hearing so quickly. The issue of leasing in Bristol Bay is one that we in Alaska have worked hard to resolve, and with your help we may finally solve the problem.

Let me say up front, I do not oppose offshore oil and gas leasing. I have supported several lease sales in my State, and worked hard to open up onshore areas as well.

However, there are places where we can all agree that leasing should not occur, because the area is too environmentally sensitive.

Bristol Bay is one of those areas. It contains the largest red salmon fishery in the world. It has significant crab and groundfish resources. It is home to several species of marine mammals, including many that are used for food by Alaska Natives. While I believe that permit restrictions can often solve conflicts between oil and gas exploration and environmental concerns, in this case they will not do the job.

At the same time, we cannot let the oil companies, which have leased tracts in Bristol Bay, continue to suffer the loss of their capital investment. I note that several companies have filed a "takings" suit against the Federal Government, in order to recover the bid money which has been held in escrow. I do not know if that suit will be successful. Therefore, in fairness to the fishermen, in fairness to the oil companies, and in fairness to the environment, I believe a way should be found to cancel existing leases and compensate the oil industry for its loss.

My bill seeks to do these things by allowing companies, who have leased in Bristol Bay, to recover their money through cash, lease credits, or other compensation. This language is nearly identical to what was passed by the House last year in the energy bill. I think the testimony today will show that we need to pass it again and see it enacted into law, so that all parties are treated fairly.

Thank you.

**Mr. ORTIZ.** Let me introduce our panel, which consists of Representatives from the State of the Alaska and industry, who are welcomed this morning.

First is Mr. Carl Rosier, Commissioner of the Alaska Department of Fish and Game. In addition to working for over 20 years with the Alaska Department of Fish and Game, Mr. Rosier has worked for the U.S. Fish and Wildlife Service and the National Fishery Service in Alaska.

Next is Mr. Robert Stewart, President of the National Ocean Industries Association. NOIA is a trade association that represents, roughly, 250 companies that are engaged in all aspects of exploring for and producing oil from the Nation's Outer Continental Shelf.

Last, but not least, is Mr. Dan Albrecht, Coordinator of the Bristol Bay Buyback Coalition, a group seeking the cancellation and buyback of OCS oil leases in the North Aleutian Basin. Mr. Albrecht is currently a Marine Policy Specialist working with the Alaska Native Fishermen, for the Bering Sea Fishermen Association.

I welcome all of you to this subcommittee. We appreciate your being with us.

I can feel sorry that some of our colleagues are not in good health or have been otherwise detained this morning but we will begin with Mr. Rosier's testimony.

#### **STATEMENT OF CARL ROSIER, COMMISSIONER, ALASKA DEPARTMENT OF FISH AND GAME**

**Mr. ROSIER.** Thank you, Mr. Chairman.

It is a pleasure to be before the committee. I appreciate the opportunity to testify this morning.

I would like to start off by saying the State of Alaska has consistently supported the Federal Outer Continental Shelf, OCS, leasing program, with the exception of leasing in the North Aleutian Basin, NAB. The State's opposition to leasing in Bristol Bay dates back nearly 20 years, and is based upon the region's extraordinary biological resources and the social and economic value of those resources to both Alaskans and the residents of the other 49 States.

In Bristol Bay, the environmental, social, and economic risk that oil development would pose to these resources far outweighs the limited economic benefit that would be derived from such development.

Bristol Bay is commonly referred to as the "Golden Triangle" by fishermen, and for good reason. As many as 100 million adult salmon and over 1 billion juvenile salmon migrate through the Bristol Bay region annually. The bay supports the largest herring population in U.S. waters; and contains important feeding, spawning, and rearing habitat for yellowfin sole, pollock, and halibut.

Bristol Bay also contains the major king crab spawning area for the eastern Bering Sea; and is a major part of the tanner crab spawning, rearing, and feeding area in the southeast Bering Sea.

These resources support the world's largest sockeye salmon fishery; a world-class herring fishery; and major components of Alaska's king crab, tanner crab, and groundfish fisheries. In 1992, the ex-vessel value of Bristol Bay salmon alone was over \$190 million, and this fishery employed over 10,000 people.

During this same year, the ex-vessel value of the red king crab fishery was over \$100 million, and the ex-vessel value of the groundfish fishery in the NAB vicinity was nearly \$53 million. The Togiak District herring fishery, which is only one small part of the region, that generated almost another \$7 million.

In addition to supporting these fisheries, Bristol Bay is a vital component of one of the most important wildlife migration corridors in the world. A majority, approximately 1.25 million, of the world's northern fur seal population; the entire Pacific grey whale population; and millions of seabirds seasonally use Bristol Bay waters and adjacent Unimak Pass for feeding, rearing, or migration.

Nearby coastal habitats provide critical staging and feeding areas for hundreds of thousands of geese and millions of ducks during the spring and fall migrations.

These habitats, particularly Izembek and Nelson Lagoons, seasonally support virtually the entire world's populations of black brant, cackling Canada geese, emperor geese, and Steller's eiders.

In recognition of this, the State and Federal Governments established seven refuges and legislatively designated critical habitat areas, encompassing over 1,000 square miles, along the north side of the Alaska peninsula.

The Port Moller CHA, which is adjacent to the leased OCS acreage, epitomizes the biological values of these areas. Port Moller provides important habitat for sea otters, harbor seals, and migrating waterfowl and grey whales.

It supports commercial and subsistence fisheries for salmon and herring; provides spawning habitat for herring and capelin; and also contains red king crab concentrations during the most vulnerable life stages of this species.

Because of Bristol Bay's extraordinary biological resources, several legitimate concerns arise from the environmental risks associated with offshore oil development. Foremost among these concerns is the potential for chronic or major oil spills.

Although the probability of a major oil spill occurring may be statistically low, accidental spills do occur with alarming regularity.

ty. Oil spill trajectories included in the Sale '92 Environmental Impact Statement, EIS, indicate that during the summer months, an oil spill in the lease area would likely be transported to the northern shores of the Alaska Peninsula and right into the heart of Bristol Bay.

The highly productive Port Moller area was identified as the area most likely to be impacted by such a spill or spills. These summer trajectories are particularly disturbing since this is the time of year when Bristol Bay supports the greatest diversity and abundance of fish and wildlife species, and commercial fisheries are most active.

Experience gained from the tragic 1989 *Exxon Valdez* oil spill clearly supports the State's long-standing concerns about the potential impacts of a major spill in Bristol Bay.

In contrast to Bristol Bay's outstanding fish and wildlife values, the Department of the Interior has estimated that the potential economic benefits of the NAB hydrocarbon resources are among the lowest of all the Nation's OCS planning areas.

Current resource estimates for the NAB are not included in the EIS for the 1992-1997, five-year OCS leasing program.

However, in 1985, DOI ranked the NAB 14th out of the Nation's 18 OCS planning areas in terms of estimated net economic value of recoverable hydrocarbon resources. Putting Bristol Bay's renewable fish and wildlife resources at risk for a short-lived, relatively low economic return from oil development is certainly not in the best interests of the State or the Nation.

For these reasons, the State of Alaska supports Representative Young's Bristol Bay Fisheries Protection Act, H.R. 705. This legislation will help preserve the long-established, world-class fisheries of the region; as well as promote conservation of internationally important wildlife resources. We urge the subcommittee to act favorably on this bill.

Thank you for the opportunity to testify on H.R. 705, and your assistance in Alaska's nearly 20-year effort to resolve State concerns over oil industry activities in Bristol Bay.

Mr. ORTIZ. Thank you, sir.

[The prepared statement of Mr. Rosier can be found the end of the hearing.]

#### STATEMENT OF ROBERT B. STEWART, PRESIDENT, NATIONAL OCEAN INDUSTRIES ASSOCIATION

Mr. ORTIZ. Mr. Stewart.

Mr. STEWART. Thank you, Mr. Chairman.

On behalf of the members of NOIA, I want to tell you how pleased we are to be incorporated in this process.

We are joined this morning in our statement by the International Association of Drilling Contractors that represents about 1,000 companies, doing both onshore and offshore drilling worldwide, and also by the International Association of Geophysical Contractors which represents about 90 percent of the worldwide geo-seismic industry.

Mr. Chairman, our position on this is really pretty simple. One, we oppose any lease cancellations that are not done within the

framework of the OCS Lands Act. That Act sets out some very clear standards to be met before leases should be canceled.

Cancellation outside of that framework, I am afraid, has a very corrosive impact on the relationship between this industry that I represent and the Federal Government. We have been business partners for decades, doing business on the Outer Continental Shelf. When you see companies come in good faith and understanding what the rules are under the OCS Lands Act, and pay out \$95 million to buy leases in the expectation that they will be able to explore them and develop the resources that are there, only to be told at a later date that they cannot explore, for those resources, and the Federal Government then does not come forward and offer compensation, it really does have a bad impact on the relationship between these two business partners.

That is something that I am very concerned about. I think it is something that the Congress and this committee should be very concerned about.

H.R. 705, the subject of this morning's hearing, is limited in its application to the North Aleutian Basin, but I think it needs to be pointed out that you have, and we have a problem elsewhere off the Coast of North Carolina, as you suggested in your opening statement, and off the Coast of Southwest Florida.

I think that the Congress needs to be not only cognizant of the fact that those problems exist there, but also be prepared to address them.

It is our view that cancellation of leases really is not an issue this morning. It is not an issue in this bill.

We think the leases for all practical purposes have already been canceled. They were canceled at the time the President signed the legislation that imposed the drilling prohibitions. That act of the Congress and the executive branch basically rendered these leases valueless to the people who own them.

Legally, they are still there, but practically, they have no further value. The issue that remains, it seems to us, is the issue of compensation. While it has been three or four years since these leases were, in our view, canceled, to date the government has not come forward with any concrete proposal for compensating these operators who paid the money to buy the leases.

That fact has resulted, as you know, in all of the lease owners in the area off Southwest Florida, off North Carolina and in North Aleutian Basin have come together and brought a lawsuit against the Federal Government. It is sort of a sad thing to see one business partner has to sue another business partner to get justice, if you will. And it is particularly sad when the partner you have to sue is your own government. But that is the fact with these leases.

Finally, I want to mention one class of companies that really are being ignored, frankly, and those are seismic companies that go out on a speculative basis and gather seismic data in the hope that they will be able, having gathered data, hope they will be able to sell it or license it to operators who are either contemplating bidding on a lease/sale or having already won leases, are developing strategies for developing those leases.

When you go in and cancel further lease/sales, you render the value of that data zero and, unfortunately, there is no provision in

the OCS Lands Act for compensating seismic operators who have done that. They are basically left holding the bag.

Finally, let me say we are not at all unaware of nor unsympathetic to the fisheries value of the North Aleutian Basin. We simply think it is wrong for the government to sell leases and then deny the lessees the opportunity to explore, and on top of that, fail to provide compensation for them. It is the compensation that is the issue, as far as we are concerned.

Thank you.

Mr. ORTIZ. Thank you, Mr. Stewart.

[The prepared statement of Mr. Stewart can be found at the end of the hearing.]

Mr. ORTIZ. Mr. Albrecht.

#### STATEMENT OF DAN ALBRECHT, COORDINATOR, BRISTOL BAY BUYBACK COALITION

Mr. ALBRECHT. Thank you, Mr. Chairman.

I appreciate the opportunity to testify before the subcommittee.

We were here last on September 25, 1991, not only on the sale 92 issue, but other reforms to the OCS Lands Act. The Buyback Coalition basically represents fishing groups, villages, Alaska Native subsistence and commercial fishermen, the processing industry, laborers, fishing crews and local environmental groups and citizens groups.

The Coalition strongly supports this bill H.R. 705. It is very similar to many pieces of H.R. 776, the Omnibus Energy Bill which passed Congress last year, unfortunately, without the provisions for sale 92.

Commissioner Rosier has already summarized a lot of the commercial fishing values of the region.

I would like to point out that right now there are several thousand fishermen in Bristol Bay waiting for the salmon to show up. There are fishermen on the Bering Sea harvesting crab and halibut and pollock and a variety of other species.

These fishermen are not only Alaskans, or Alaskan natives, but include many fishermen from Washington State, Oregon and California. Indeed, there are permit holders and crew members from throughout the U.S.

The industry is about to reach its peak right now. It has been a commercial fishing industry that has been going on for more than 100 years in that area. People have been coming to fish in that area and make a living for families throughout the U.S.

As Commissioner Rosier points out, we are comparing an industry that is worth anywhere from \$500 million to \$1 billion. It employs in excess of 10,000 Americans year after year.

The fish and the other resources there are harvested in a very responsible manner and will continue to be so, I am confident of that. In addition to there being a low amount of estimated oil resources in the area, which has made protection of Bristol Bay fisheries important, our experience in Alaska and experience in the U.S. and worldwide is when you get into a situation like Bristol Bay of subarctic conditions, of winds reaching 100 miles an hour, of stormy conditions, and this is an isolated area. This is not just

around the corner like Prince William Sound, although that didn't make a difference. This is a couple of hundred miles away from major areas, such as Anchorage, for staging of equipment.

As reported in the briefing papers, the MMS and the industry did a cleanup plan in March 1991, and the House Interior Appropriations Committee analyzed how the response would be conducted to a spill in Bristol Bay. We recognized that an oil well blowout or a spill would be a rare occurrence. However, we, as well as the subcommittee, remain unpersuaded that things have changed that much as far as cleanup technology.

In calm waters, things can work to a degree, but once the seas get more than a few feet high, which is pretty much all the time in Bristol Bay or the North Aleutian area, this equipment just won't work. This committee, as well as the Interior and Natural Resources Committee, worked very hard on a bill last year which was included as part of the Energy Bill.

The full House passed it; everything that the coalition was looking for, as well as reforming the OCS Lands Acts. So, hopefully, these kind of things would not happen again, and we would not have to be here having hearings, there would not have to be lawsuits going on right now and this question would have been settled or indeed would not have come up.

As Commissioner Rosier pointed out, the State fought this lease sale from the get-go, and it still didn't make any difference. MMS and Interior rammed the lease sale down the throat of the State of Alaska and the fishing industry and Alaska natives of the region. Alaska did not get a dime for the lease sale and, therefore, should not have to put up any money to pay back for the lease sale. The record of continuous opposition there has been no equivocation on the part of the State or its people.

The fact that the courts are dealing with this now has a big question mark for the committee and for Congress, if the courts will deal with the compensation. Who knows what the cost will be.

Will it be negotiated? Will a judge who has never been to Bristol Bay, never been on an oil rig, never been to any of these areas, decide how this issue should be dealt with or what is fair compensation?

This is an issue that should be done in Congress. It was almost done last year.

I urge the committee to pass the bill. I know the OCS fight was hard last year. Nobody ever said your jobs were easy. We hope you can settle this sometime soon.

Mr. ORTIZ. Thank you very much.

[The prepared statement of Mr. Albrecht can be found at the end of the hearing.]

Mr. ORTIZ. We are happy to be joined by my good friend and colleague from Texas, Mr. Green.

I have some questions for all the witnesses.

This proposed legislation will amend the OCS Lands Act. Do you feel that this amendment will help ensure that this situation is not repeated in the future?

How do you feel about this?

Mr. STEWART. Mr. Chairman, what the amendment does, it seems to me, is to lower the standard for lease cancellation. Under

the current law, a lease has to be suspended for five years. The amendment would reduce that to two years.

Under the law now, the suspension has to be imposed by the Secretary of Interior. Under the amendment, a congressionally imposed moratorium would qualify as a suspension, so this makes it easier for leases to be canceled.

I don't think that really is going to solve anything. It will simply make what we are talking about doing here simpler and easier to do.

Mr. ORTIZ. Is there anybody else who would like to respond to that question?

Mr. ALBRECHT. Yes.

It does make it easier to rectify the situation. Two years ago, there were other bills submitted, by some of the Florida Representatives, which would have not only reduced the time from five years to two years, but if memory serves, would also have given greater deference to ecological and environmental values in weighing lease/sales.

It would have also given more deference to the recommendations under Section 19 to the governors of affected States, so that we would not be in this situation in the first place, especially with Alaska, again, continuous opposition by the State and it still didn't make a difference. I can't remember the bills from two years ago, but there are provisions in there which are not in H.R. 705, which would be more comprehensive to put the Congress in a situation where it would weigh equally some of these values so we did not have these conflicts.

Mr. STEWART. Mr. Chairman, may I add something?

Mr. ORTIZ. Yes.

Mr. STEWART. We are still in a learning process. One of the things that I think we have learned is that to go into a lease/sale in an area where the public does not support it, opposes it, is an invitation to financial disaster for us.

So if we were to go through this process again, I believe that the industry would be very dubious about bidding on leases in the North Aleutian Basin. I think sitting where we are today, we wish the sale had never happened because there is nothing worse than having \$95 million out there, having no right to explore the leases and being puzzled by how to deal with it.

Adoption of Mr. Young's bill, while it may serve to cancel the leases, does not get the compensation parts of it done. I mean, those funds have to be appropriated somehow so the Secretary of the Interior when he cancels the leases, as the bill would call on him to do, he has the money appropriated for him to compensate the lessees.

I think also that MMS and the Federal Government has to learn something. You have learned the same thing, I think, that we have, and that is that it is unwise to even hold a lease/sale in an area where the public objects to it.

Our job is to try to persuade the public that we don't pose a threat. But until we can do that, I think it is a mistake to hold lease sales in South Argas. I would agree with Mr. Albrecht.

Mr. ORTIZ. Very good.



Mr. Rosier, since Federal revenue is extremely limited, could the State of Alaska contribute to any buyback of the leases? If the State did contribute, do you feel that the State would have any particular rights to those leases now?

Mr. ROSIER. Mr. Chairman, if I might, I would say again, based on the State's consistent opposition to this lease, to the point of going to court, we lost that case obviously, originally. But the State invested significant dollars into fighting the leases and have over time consistently spent dollars on this.

Really, the State is not in a position to, in fact, participate to a great degree in the buyback of these leases at the present time. We are faced with many of the same problems that you are faced with in the Federal Government in terms of revenues to the States. So it is a tough, knotty problem, but the State is not in a position certainly to buyback at the present time.

Mr. ORTIZ. I will yield to my good friend, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

I have just a number of questions.

Mr. Rosier, I was looking at your testimony. In the back of it, it shows a map of the area of the *Exxon Valdez* spill compared to the Bristol Bay region. The *Exxon Valdez* spill did not get into the Bristol Bay region. Is this map just to show us a comparison to the lease?

Mr. ROSIER. That is correct. There was no *Exxon Valdez* oil that got into the Bristol Bay area. Generally, this shows the pattern of distribution as we know the oceanography in the area during the summer months and a spill in the size of the *Exxon Valdez*.

Mr. GREEN. When I first looked at it, I thought, my God, that is new information.

Mr. ROSIER. No.

Mr. GREEN. Mr. Stewart, I have read your testimony and I can understand the concerns about the canceling of the leases, but in your testimony you said the leases for all practical purposes have been canceled already and now we are just talking about compensation.

In your questioning, you said this bill does not provide for compensation for this resolution; is that correct?

Mr. STEWART. That is right.

Mr. GREEN. What does H.R. 705 do, then, if in all practical purposes you are prohibited and your members are prohibited from exploration or drilling?

Mr. STEWART. It seems to me, H.R. 705 authorizes the Secretary to compensate the lessees. But the next step—and that is appropriating the funds to do it, is beyond the scope of this committee's authority. You have to go to the Appropriations Committee to do that.

We have not seen any Secretary of the Interior, the one present or past, since these moratoriums were put in place, build into their budget for the Interior Department the funds necessary to compensate these lessees, nor have we seen the Appropriations Committee appropriate any funds for that purpose.

It is fine to authorize the Secretary to cancel the leases. But if he doesn't have any funds appropriated to compensate people, he cannot do it.

Mr. GREEN. You are still out there without the ability to drill under current law, or 705, and there is no compensation?

Mr. STEWART. Which explains why these companies are in court.

Mr. GREEN. I noticed in your testimony, the comparison between this-and, of course, being from Houston, Texas, similar to the Chairman of the Committee, this similar situation could happen in the Gulf of Mexico, for example, as to what is happening in Bristol Bay.

Mr. STEWART. Sure. You have a situation that is virtually identical to this off Southwest Florida, in the Eastern Gulf Planning Area, where in fiscal year 1989, where for the first time, a drilling moratorium was imposed. A drilling moratorium is different than a lease moratorium. In a drilling moratorium, you are telling people who have already brought leases that they cannot explore them.

I think Congress really needs to look at that situation, they need to look at the North Aleutian Basin and also the leases off North Carolina.

Mr. GREEN. When the moratorium was put in place was there any discussion on compensation for prohibiting drilling?

Mr. STEWART. None that I have heard of. The whole issue was that we have to protect the fisheries, which is fine. I think the moratorium was, perhaps, in some way, linked to *Exxon Valdez*, although both of the witnesses pointed out the State opposed those sales from the beginning. But there was nothing said, that I heard, about compensating the leaseholders, only about canceling the rights to drill.

Mr. GREEN. Since there is no compensation in this, does this bill discuss deferred compensation that could be a possibility over appeared of years, instead of this fiscal year?

Mr. STEWART. I am not aware that is in the bill. It seems to me, compensation has already been deferred. We are talking about something that happened in 1989, and here it is already 1993. That is already a deferral, it seems to me.

Mr. GREEN. Are you still having to pay rent for the lease?

Mr. STEWART. I believe they are suspended by the Secretary so I don't believe we are paying rent.

Mr. GREEN. So we are not charging you for prohibiting you not to drill.

Mr. STEWART. We are not being charged for not being allowed to drill; that is correct.

Mr. GREEN. Has the Secretary of Interior commented on whether or not there is a repurchase option that should be exercised, so instead of, say, compensation, we would actually repurchase it, the lease? Has there been any discussion on that?

Mr. STEWART. I guess I don't fully understand the distinction between compensation and repurchase. The leases have been rendered valueless, at this point.

The companies that have invested in them are entitled, I believe, to recompense. Whether you call it a repurchase or compensation, it doesn't really matter. They are entitled to be paid for what they have invested.

Mr. GREEN. I totally agree. Whether we call it a elephant or a donkey, just so the money gets paid is what matters.

Thank you, Mr. Chairman.

Mr. ORTIZ. Going back to compensation, what is the industry's position on the deferred compensation? I ask this because as I glance at the bill here on page 4, at the bottom of the paragraph, which says, Section 6: Compensation for Lease Buybacks. In Section 5(a)(2)(D) says: " That compensation a lessee is entitled the to receive, under subparagraph (C) may be made in the form of currency, forgiveness of the lessee's obligation to pay rents or royalties which would otherwise be paid to the Federal Government on another lease issued pursuant to this Act or the Mineral Leasing Act, or a combination of currency with such forgiveness."

I don't know if you have had a chance to look at this section of the bill.

Mr. STEWART. I have.

Do you want my reaction to what that means, Mr. Chairman?

Mr. ORTIZ. Yes. How do you feel about deferred compensation, this portion of the bill there?

All three of can you respond to that question.

Mr. STEWART. I have a very strong personal affinity to currency. I really like it a lot and I think so do the members of NOIA.

The way the bill is drafted when you talk about forgiveness or paying rents and royalties on another lease-if we are talking about one lease, you are talking about deferring it probably into the 22nd century. If you want to get around having the Federal Government disgorge currency, the way to do it and be fair to the companies involved here, it seems to me, is to say: Look at the whole catalog of leases that you own and that are in current production and we will forgive the royalties on all of them until you are made whole.

But to talk in terms of another lease, indicating one lease, that simply would not thoroughly compensate the folks who have invested in these leases.

Mr. ORTIZ. Would anybody else like to respond to that? You may feel free.

If not, I have another question for Mr. Albrecht.

Are there any mitigating techniques which could be used to make drilling environmentally acceptable?

Mr. ALBRECHT. At this point, we have not seen it. Many promises were made before about Prince William Sound, about how things could have gotten taken care of. The weather was good then and things did not get taken care of.

The situation has not changed and we do not see anything in the proverbial pipeline to make things safer. Even if the risk were small, we say why put it as risk. We have an economy there that is self-sustaining, that employs several thousand Americans, so why take the chance.

Mr. ORTIZ. Anybody else?

Mr. ROSIER. Mr. Chairman, I would just like to agree with Dan on that particular point. I think that we have recently taken over the Bering Sea area from the foreign fleets that operated there for years, and years, and years, and dominated those fisheries.

We have an excellent program involving community development quotas in which allocations of the resource are being made to very small communities that border the Bering Sea area up there on this. We are just getting that program off the ground, but it is a

multi-million dollar enterprise for those small communities that have no other source of revenue at the present time.

In our view, the risk is simply too high at the present level of technology in that area.

Mr. ORTIZ. Mr. Stewart?

Mr. STEWART. Mr. Chairman, as I said earlier, I think this industry learned something. One of the most painful lessons that we learned involved something called the Point Arguello field off the coast of California, where to my knowledge, the single most expensive lease ever sold by the Federal Government was in that package of leases. If my memory serves me correctly, Chevron paid in excess of \$300 million for one lease.

They have drilled their wells. It is in production now, as a matter of fact, but it got hung up over a transportation question in the aftermath of the *Exxon Valdez*. The tools, the opposition to that production and transportation modes were so enormous that those companies that spent all that money, even though they are now in production, they may never make a profit on it. That is part of what we have learned.

In the case of the North Aleutian Basin, I believe that if MMS offered up exploration drilling permits today to the companies that own those leases, I don't think they would drill, I don't think they would pick up the permits because they don't want to get hung up in a repetition of what happened at Point Arguello.

Mr. ORTIZ. Mr. Green, do you have any further questions?

Mr. GREEN. No, sir.

Mr. ORTIZ. That concludes the testimony of the panels. I am sorry for the inconvenience we had this morning. Mr. Young is ill. Mr. Weldon had difficulties getting to the hearing this morning.

But I want to thank you for the valuable insights you shared with us today. I think this hearing serves as an important beginning to studying the issue of buybacks in Alaska and the broader issue of how this legislation will affect the offshore gas and oil program both in Alaska and the entire OCS.

Several of the subcommittee Members and I have questions for the witnesses and we would appreciate your replying for the record in writing.

[The information follows at the end of the end of the hearing.]

Mr. ORTIZ. Thank you for coming to the hearing. I thank the Members for their participation.

Any other material that you would like to include in your testimony will be included for the record.

Thank you.

This hearing is adjourned.

[Whereupon, at 10:45 a.m., the subcommittee was adjourned, and the following was added to the record:

103D CONGRESS  
1ST SESSION

# H. R. 705

To protect the fisheries of Bristol Bay, Alaska, by purchasing certain oil leases, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 1993

Mr. YOUNG of Alaska introduced the following bill; which was referred jointly to the Committees on Natural Resources and Merchant Marine and Fisheries

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## A BILL

To protect the fisheries of Bristol Bay, Alaska, by purchasing certain oil leases, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Bristol Bay Fisheries  
5       Protection Act”.

6       **SEC. 2. DEFINITIONS.**

7       For the purposes of this Act—

8               (1) terms defined in the Outer Continental  
9       Shelf Lands Act have the meaning given such terms  
10      in that Act;

1           (2) the term "North Aleutian Basin Planning  
2       Area" means the area so named and designated in  
3       the Department of the Interior Outer Continental  
4       Shelf Natural Gas and Oil Resources Management  
5       Comprehensive Program 1992-1997 Proposal, dated  
6       July 25, 1991;

7           (3) the term "preleasing activities" means ac-  
8       tivities conducted before a lease sale is held, and in-  
9       cludes the scheduling of a lease, requests for indus-  
10      try interest, calls for information and nominations,  
11      area identifications, publication of draft or final en-  
12      vironmental impact statements, notices of sale, and  
13      any form of rotary drilling; but such term does not  
14      include environmental, geologic, geophysical, eco-  
15      nomic, engineering, or other scientific analysis, stud-  
16      ies, and evaluations;

17          (4) the term "Secretary" means the Secretary  
18      of the Interior.

19 **SEC. 3 RELATIONSHIP TO OUTER CONTINENTAL SHELF**  
20 **LEASING PROGRAM AND EXISTING LAW.**

21          (a) Notwithstanding the Outer Continental Shelf  
22      Leasing Program maintained by the Secretary pursuant  
23      to section 18 of the Outer Continental Shelf Lands Act  
24      (43 U.S.C. 1344) or any lease sale schedule contained in  
25      a specific leasing program thereunder, the Secretary shall

1 carry out such program consistent with the provisions of  
2 this Act.

3 (b) Except as otherwise specifically provided in this  
4 Act, nothing in this Act shall be construed to affect the  
5 application of other Federal law to activities conducted on  
6 the Outer Continental Shelf.

7 **SEC. 4. RESTRICTIONS AND REQUIREMENTS APPLICABLE**  
8 **TO THE NORTH ALEUTIAN BASIN PLANNING**  
9 **AREA.**

10 In the North Aleutian Basin Planning Area, the addi-  
11 tional restrictions and requirements in this section shall  
12 apply:

13 (1) No preleasing activity shall be conducted  
14 before the issuance of the first final 5-year leasing  
15 plan under section 18 of the Outer Continental Shelf  
16 Lands Act after January 1, 2002.

17 (2)(A) Notwithstanding the requirements of  
18 section 5(a)(2) (A) and (B) of the Outer Continental  
19 Shelf Lands Act (43 U.S.C. 1334(a)(2) (A) and  
20 (B)), the Secretary, within 90 days after the date of  
21 enactment of this Act, shall cancel any active leases  
22 in the area.

23 (B) Before the cancellation required under sub-  
24 paragraph (A), no exploration or development plans  
25 or permits to drill shall be approved for any such

1 lease in existence on the date of enactment of this  
2 Act.

3 (C) Compensation to lessees owning leases that  
4 are canceled under subparagraph (A) shall be deter-  
5 mined under section 5(a)(2) (C) and (D) of the  
6 Outer Continental Shelf Lands Act (43 U.S.C. 1334  
7 (a)(2) (C) and (D)).

8 **SEC. 5. CANCELLATION OF LEASES.**

9 Section 5(a)(2)(B) of the Outer Continental Shelf  
10 Lands Act (43 U.S.C. 1334(a)(2)(B)) is amended—

11 (1) by inserting “or pursuant to an Act of Con-  
12 gress” after “by the Secretary”; and

13 (2) by striking “five” and inserting in lieu  
14 thereof “two”.

15 **SEC. 6. COMPENSATION FOR LEASE BUYBACKS.**

16 Section 5(a)(2) of the Outer Continental Shelf Lands  
17 Act (43 U.S.C. 1334(a)(2)) is amended—

18 (1) by inserting “and” at the end of subpara-  
19 graph (C); and

20 (2) by adding at the end the following new sub-  
21 paragraph:

22 “(D) that compensation a lessee is entitled  
23 to receive under subparagraph (C) may be  
24 made in the form of currency, forgiveness of the  
25 lessee’s obligations to pay rents or royalties



1           which would otherwise be paid to the Federal  
2           Government on another lease issued pursuant  
3           to this Act or the Mineral Leasing Act, or a  
4           combination of currency with such forgive-  
5           ness.”.

**Testimony of Carl Rosier**

**Commissioner**

**Alaska Department of Fish and Game**

**on H.R. 705**

Submitted to the Subcommittee on Oceanography, Gulf of Mexico,  
and the Outer Continental Shelf

June 15, 1993

Mr. Chairman and Members of the Subcommittee:

My name is Carl Rosier and I am the Commissioner of the Alaska Department of Fish and Game. I'd like to thank the Subcommittee for the opportunity to testify on behalf of the Bristol Bay Fisheries Protection Act. I'll begin by providing you some background information relevant to this proposed legislation.

The State of Alaska has consistently supported the federal Outer Continental Shelf (OCS) leasing program - with the exception of leasing in the North Aleutian Basin (NAB). The state's opposition to leasing in Bristol Bay dates back nearly 20 years, and is based

upon the region's extraordinary biological resources and the social and economic value of those resources to both Alaskans and the residents of the other 49 states. In Bristol Bay, the environmental, social, and economic risk that oil development would pose to these resources far outweighs the limited economic benefit that would be derived from such development.

While the state fully recognizes the importance of producing domestic oil supplies, the OCS Lands Act requires that this national interest be balanced with state concerns and the environmental risks posed by oil development. Alaska's concerns over leasing in Bristol Bay have been so compelling that, after exhausting all administrative means of resolving this issue, the state initiated litigation to stop OCS leasing in this area. Unfortunately, the state did not prevail in this litigation, so we have been urging Congressional action to conserve this region's unparalleled fish and wildlife resources.

#### Bristol Bay Fish and Wildlife Resources

Bristol Bay is commonly referred to as the "Golden Triangle" by fishermen and for good reason. As many as 100 million adult salmon and over one billion juvenile salmon migrate through the Bristol Bay region annually. The bay supports the largest herring population in U.S. waters; and contains important feeding, spawning, and rearing habitat for yellowfin sole, pollock, and

halibut. Bristol Bay also contains the major king crab spawning area for the eastern Bering Sea; and is a major part of the tanner crab spawning, rearing, and feeding area in the southeast Bering Sea.

These resources support the world's largest sockeye salmon fishery; a world-class herring fishery; and major components of Alaska's king crab, tanner crab, and groundfish fisheries. In 1992, the ex-vessel value of Bristol Bay salmon was over 190 million dollars, and this fishery employed over 10,000 people. During this same year, the ex-vessel value of the red king crab fishery was over 100 million dollars, and the ex-vessel value of the groundfish fishery in the NAB vicinity was nearly 53 million dollars. The Togiak District herring fishery generated almost another 7 million dollars.

In addition to supporting these fisheries, Bristol Bay is a vital component of one of the most important wildlife migration corridors in the world. A majority (1.25 million) of the world's northern fur seal population; the entire Pacific grey whale population; and millions of seabirds seasonally use Bristol Bay waters and adjacent Unimak Pass for feeding, rearing, or migration. Nearby coastal habitats provide critical staging and feeding areas for hundreds of thousands of geese and millions of ducks during the spring and fall migrations. These habitats, particularly Izembek and Nelson lagoons, seasonally support

virtually the entire world's populations of black brant, cackling Canada geese, emperor geese, and Steller's eiders.

The fish and wildlife resources of the North Aleutian Basin and adjacent waters have tremendous social and economic value; not only to Alaskans, but to all U.S. residents and indeed the world. In recognition of this, the state and federal governments established seven refuges and legislatively designated critical habitat areas (CHA), collectively encompassing over a thousand square miles, along the north side of the Alaska Peninsula including: Pilot Point CHA, Egegik CHA, Cinder River CHA, Port Heiden CHA, Port Moller CHA, and the Izembek state and federal refuges.

The Port Moller CHA, which is adjacent to the leased OCS acreage, epitomizes the biological values of these areas. Port Moller provides important habitat for sea otters, harbor seals, and migrating waterfowl and grey whales. It supports commercial and subsistence fisheries for salmon and herring; provides spawning habitat for herring and capelin; contains red king crab concentrations during the most vulnerable life stages of this species; and is believed to be important rearing habitat for numerous other commercial and forage fish species.

#### Risks of Oil and Gas Development

Because of Bristol Bay's extraordinary biological resources, several legitimate concerns arise from the environmental risks associated with offshore oil development. Foremost among these concerns is the potential for chronic or major oil spills. Although the probability of a major oil spill occurring may be statistically low, accidental spills do occur with alarming regularity. In 1991 alone, three tanker incidents (i.e., the ABT Summer, Haven, and Kirki) spilled over 26 million gallons of oil, and two pipeline mishaps resulted in the discharge of over two million gallons of oil. As recently as 1992, there were two oil well blowouts, one in the Gulf of Mexico and one in Uzbekistan, which collectively discharged over 80 million gallons of oil. Of course all Americans are familiar with the 1989 Exxon Valdez oil spill which fouled Alaskan beaches from Valdez to the Alaska Peninsula.

Oil spill trajectories included in the Sale 92 Environmental Impact Statement (EIS) indicate that during the summer months, an oil spill in the lease area would likely be transported to the northern shores of the Alaska Peninsula and right into the heart of Bristol Bay. The highly productive Port Moller area was identified as the area most likely to be impacted by such a spill(s). Results of a drift bottle study conducted by the Alaska Department of Fish and Game in May 1984 support this prediction. These summer trajectories are particularly disturbing since this is the time of year when Bristol Bay supports the greatest

diversity and abundance of fish and wildlife species, and commercial fisheries are most active.

Experience gained from the 1989 Exxon Valdez oil spill clearly supports the state's long-standing concerns about the potential impacts of a major spill in Bristol Bay. Exxon Valdez damage assessment studies conducted by state and federal trustee agencies indicate that the number of birds killed by that spill ranged between 300,000 to 645,000. Decreased reproduction and other chronic effects thought to be related to the spill continue today for some bird species (e.g., common murre and harlequin ducks). An estimated 3,500 to 5,500 sea otters and 200 harbor seals were also killed by the spill. Injuries to salmon eggs and larvae occurred, with egg mortality from oiled streams significantly greater than in unoiled areas (i.e., 67% greater in 1989, 51% greater in 1990, and 96% greater in 1991). The spill also caused increased mortality in herring eggs, and hydrocarbons were found in the bile of halibut; pollock; rock, yellowfin, and flathead sole; and other fish species. Commercial fisheries over 200 miles away in Kodiak and Cook Inlet had to be closed or restricted. Subsistence harvests of fish and wildlife were disrupted in fifteen Alaskan villages. If a spill like the Exxon Valdez were to occur in Bristol Bay, the impacts could be as severe, or even more so, than those experienced in Prince William Sound. Figure 1 shows the likely geographic extent of such a spill based on Bristol Bay summer circulation patterns.

In addition to concerns about oil spills, the state is apprehensive about other potential conflicts between an emerging oil industry and the established fishing industry. During oil development in the North Sea, fishing gear was damaged by oil industry-related obstructions, such as pipelines and wellheads. Major competition between the oil and fishing industries for harbor, dock, and repair facilities also occurred. Some fishing ports in Scotland were converted to oil bases, thereby displacing fishermen; and five processing plants were closed and established markets were lost because many workers converted to oil industry jobs and processors could not hire sufficient labor to meet demand. North Sea oil development caused significant socio-economic changes in many traditional fishing ports, and these same changes could occur in Bristol Bay communities.

#### North Aleutian Basin Oil and Gas Potential

In contrast to Bristol Bay's outstanding fish and wildlife values, the Department of the Interior (DOI) has estimated that the potential economic benefits of the NAB hydrocarbon resources are among the lowest of all the nation's OCS planning areas. Current resource estimates for the NAB are not included in the EIS for the 1992-1997 five-year OCS leasing program. However, in 1985, DOI ranked the NAB 14th out of the nation's 18 OCS planning areas in terms of estimated net economic value of recoverable hydrocarbon

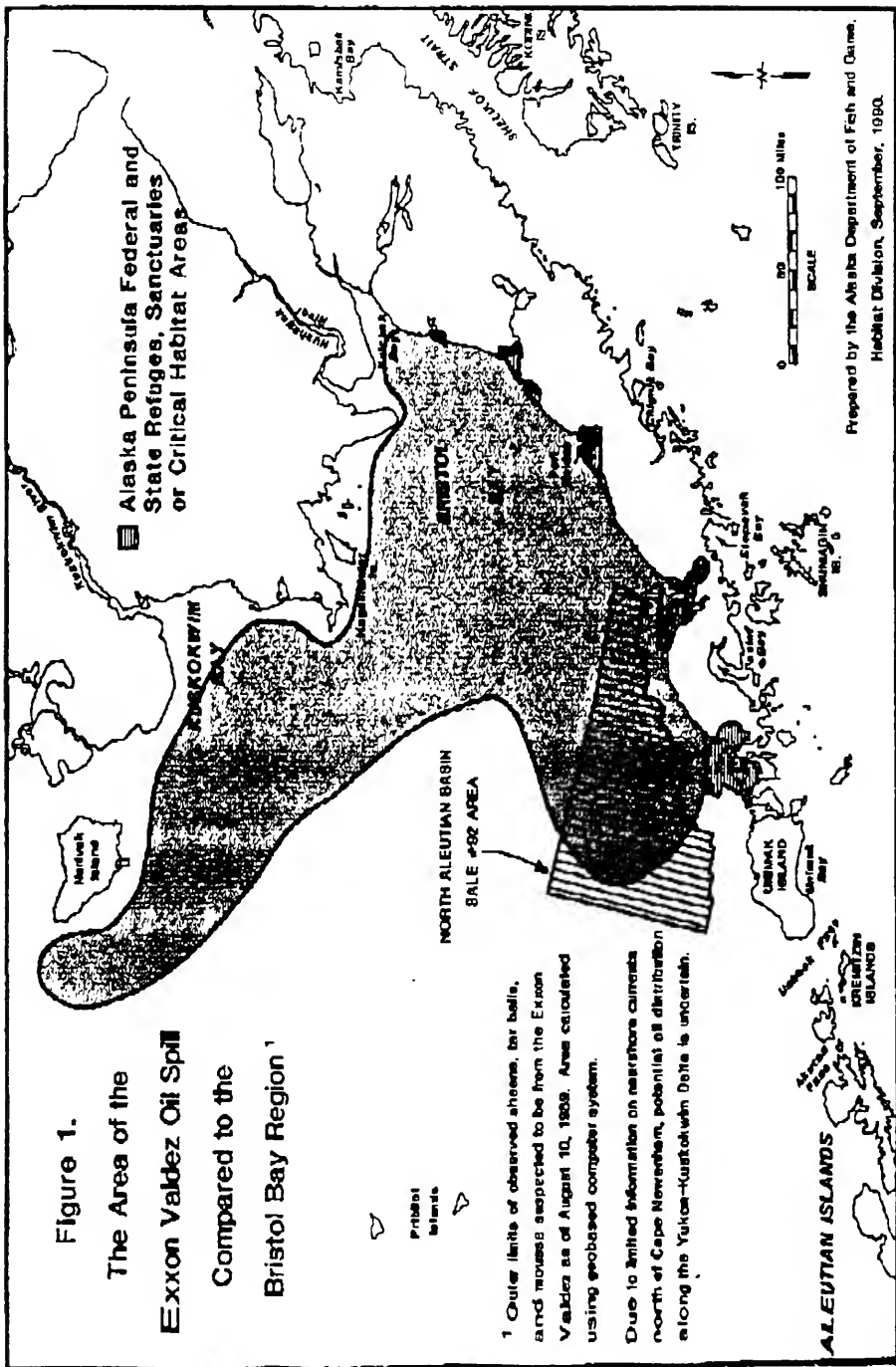


resources. Putting Bristol Bay's renewable fish and wildlife resources at risk for a short-lived, relatively low economic return from oil development is certainly not in the best interests of the state or the nation.

H.R. 705

For these reasons, the State of Alaska supports Representative Young's Bristol Bay Fisheries Protection Act, H.R. 705. This legislation will help preserve the long established, world-class fisheries of the region; as well as promote conservation of internationally important wildlife resources. We urge the Subcommittee to act favorably on this bill. Thank you for the opportunity to testify on H.R. 705, and your assistance in Alaska's nearly 20-year effort to resolve state concerns over oil industry activities in Bristol Bay.

Figure 1.  
The Area of the  
Exxon Valdez Oil Spill  
Compared to the  
Bristol Bay Region<sup>1</sup>



Prepared by the Alaska Department of Fish and Game,  
Habitat Division, September, 1990.

Testimony  
of  
Robert B. Stewart  
on behalf of  
the National Ocean Industries Association,  
the International Association of Drilling Contractors  
and the International Association of Geophysical Contractors

Before the  
House Subcommittee on Oceanography,  
Gulf of Mexico and the Outer Continental Shelf  
Regarding the Bristol Bay Fisheries Protection Act  
H.R. 705  
June 15, 1993

The National Ocean Industries Association (NOIA) welcomes the opportunity to present our views on the issue of lease cancellation and specifically on H.R. 705, introduced by Mr. Young. NOIA is a trade association that represents roughly 250 companies that are engaged in all aspects of exploring for and producing crude oil and natural gas from our nation's Outer Continental Shelf (OCS). We are joined in this statement by the International Association of Drilling Contractors (IADC) and the International Association of Geophysical Contractors (IAGC). IADC represents over 1,000 companies worldwide performing virtually all drilling offshore and onshore. IAGC has more than 175 member companies who collectively represent 90% of the international seismic geophysical industry.

NOIA has long opposed any cancellation of OCS leases for reasons other than those specified in Section 5 (a) (2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334 (a) (2)). Briefly, the Act requires the Secretary of the Interior to find first that continued activity pursuant to such lease would probably cause serious harm or damage to life, property, the national security or defense, or to the marine, coastal or human environment; second that these threats will not decrease to an acceptable level within a reasonable period of time; and third that the advantages of cancellation outweigh the disadvantages and that the leases have been under continuous suspension by the Secretary for five years.

Lease cancellations such as those proposed in H.R. 705 as well as those that have been suggested in the Eastern Gulf of Mexico south of 26 degrees north latitude and in the Mid-Atlantic Planning area off the coast of North Carolina strike at the core of the business relationship between the offshore oil and gas industries and the federal government. These leases were purchased in good faith by operators who understood the rules as set forth in the OCS Lands Act, only to be told at a later date that exploration of those leases would not be allowed by the same government that sold them in the first place. When this denial of the right to explore is then followed by an extensive period during which neither the executive nor legislative branches of government are seen to seriously address compen-

sation to those who have invested in these leases either directly or indirectly, loss of faith and an unhealthy measure of cynicism about doing business with the government is the result.

While H.R. 705 is limited in its application to acreage under lease in the North Aleutian Basin Planning Area, the issues it raises are every bit as present off the coast of North Carolina and off Southwest Florida. Given the factual similarities that blanket all three areas, it is difficult to see how Congress can consider one without considering the others as well.

NOIA believes that, as a practical matter, cancellation of these leases is not much of an issue. It seems to us that cancellation took place when the President signed legislation passed by Congress forbidding the Department of the Interior from permitting operators to explore their leases. While these leases may still exist as a matter of law, they have been rendered entirely useless to their owners. The lesson we have learned and continue to learn from these events is that the political risks of seeking to do business in certain parts of the United State simply overwhelm any potential benefit that might come from investing in these areas under current circumstances.

Once we pass the issue of lease cancellation, what remains is compensation. As we noted earlier, while both the executive and legislative branches of the federal government have talked about the need to compensate those who have suffered losses connected to these actions by the federal government, little else has occurred. So little, in fact, that all of the lease owners holding leases in each of the three areas identified earlier, have resorted to litigation against the United States to recover their losses. It is indeed a sad thing when one business partner must haul another into court in order to achieve a fair result. This is particularly so when the defaulting partner is our own government. Congress should finally take responsibility for its actions and provide a fair compensation formula for the Alaska, North Carolina and Florida leases, while recognizing that they have been

effectively cancelled.

We also want to mention a class of firms that will suffer substantial losses because of these lease cancellations but for whom the statute makes no provision for compensation. Geophysical contractors frequently collect seismic data at their own expense in the hope of being able to license that data on a non-exclusive basis to a number of operators with interests in the area. When lease sales and leases in areas where non-exclusive data has been collected are cancelled, the value of that data is reduced to zero. Ironically, if an operator had paid a geophysical contractor to collect that same data on an exclusive basis, the operator would be able to recover those costs. Only the contractor is left holding the bag.

In closing, we are not unaware of nor unsympathetic to the concerns for the fisheries of Bristol Bay. But we believe it is bad policy and just plain wrong for the federal government to sell leases on the OCS for the purpose of exploring for and possible development of crude oil and natural gas and then withdraw that right without making provision for full and prompt compensation. Thank you for considering our views on this issue.

**BRISTOL BAY BUYBACK COALITION**

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## TESTIMONY OF

DANIEL E. ALBRECHT, COORDINATOR

BRISTOL BAY BUYBACK COALITION

ON

H.R. 705, THE BRISTOL BAY FISHERIES PROTECTION ACT

BEFORE THE

SUBCOMMITTEE ON OCEANOGRAPHY, GULF OF MEXICO,  
AND THE OUTER CONTINENTAL SHELFCOMMITTEE ON MERCHANT MARINE AND FISHERIES  
U.S. HOUSE OF REPRESENTATIVES

JUNE 15, 1993

Mr. Chairman and members of this Committee:

The Bristol Bay Buyback Coalition is an association of thirty-two organizations that support a cancellation and repurchase of the OCS Sale 92 leases in the North Aleutian Basin of western Alaska. The Coalition's members represent the following diverse groups: commercial fishermen, subsistence fishermen, western Alaskan municipal bodies and villages, local Coastal Zone Management authorities, western Alaskan Yup'ik Eskimo, Pacific Northwest and Alaskan processors, processing plant laborers and fishing crews, and Alaska-based environmental groups. The Coalition strongly supports H.R. 705, the Bristol Bay Fisheries Protection Act submitted by Congressman Don Young of Alaska.

In addition to the membership of the Coalition, Governor Walter J. Hickel of Alaska and the Alaska State Legislature have restated Alaska's opposition to OCS development in the heart of the State's most valuable fishery. The Coalition works closely with the Hickel Administration and the Legislature in pursuit of our mutual interests in protecting Bristol Bay. On September 25, 1991 we testified to this subcommittee on the need to buyback the Sale 92 leases as well as reform the OCS Lands Act so that future leasing mistakes and controversial moratoria and buyback fights can be avoided.

### The economic and environmental value of Bristol Bay

Bristol Bay, in the southeast portion of the Bering Sea, contains one of the richest fishing grounds and most productive ecosystems in the world. Its biological value in terms of fish, marine mammals and birds is unparalleled. The Bay is home, breeding and nursery ground, and migratory route and resting place for billions of these animals at some stage in their life. This area is an important feeding ground for roughly 1 billion outmigrating juvenile salmon annually; and over 50 million adult salmon pass through the area on their way to spawning grounds in western Alaska rivers. It has been identified as one of the most productive halibut nursery areas for North Pacific stocks, and the Sale 92 area is in the heart of king crab habitat.

The commercial fisheries in Bristol Bay and nearby southern Bering Sea are worth more than \$1 billion annually in first wholesale value and employ roughly 10,000 people on fishing and processing vessels, in shoreside plants and in support facilities and services. These fisheries include five species of salmon, king and tanner crab, Pacific cod, pollock, sole and other bottomfish, and herring and halibut.

In addition to fisheries, the Bristol Bay region is vital habitat to a variety of marine life. Thousands of walrus and whales migrate through the area, while the coastal region is home to sea lions, fur seals, and harbor seals as well as over 60 million seabirds and migratory waterfowl such as ducks and geese. These resources are critical to the subsistence hunting economy and culture of the Yupik, Aleut and Inupiaq Native peoples.

In contrast to the fisheries and wildlife resources, the estimated value of the recoverable oil in Bristol Bay is relatively low. It has been reported that the North Aleutian Basin contains about 7/10ths of 1% of the nation's total offshore hydrocarbon reserves (roughly 279 million barrels of oil) or about 3% of what's in Prudhoe Bay. This hardly compares to the yearly renewable value of the commercial fisheries.

Oil development in the Bay presents a significant risk to the fisheries and to the people and communities in this area. The oil industry contends that the technology is available and that they have the ability to mitigate any oil spill event which could occur should exploration and development proceed. However, the industry does not have the capability to handle a major spill in subarctic waters where foul weather is common and people and equipment would be stretched to the breaking point. Despite a joint MMS and industry cleanup plan released in March 1991 for a hypothetical



exploratory oil well blowout, the House Interior Appropriations Subcommittee reported that it remains "unpersuaded that existing technology would work substantially better in Bristol Bay than it did in Prince William Sound or that a 19 percent chance of oil contamination of the salmon fisheries in Bristol Bay is an acceptable risk."

### **The current situation**

Mr. Chairman, the Bristol Bay lease sale is the only OCS lease sale the State of Alaska and most of the Coalition's members have ever opposed. The membership of the Coalition recognizes that OCS oil and gas activity has a role to play in preserving America's energy security. However, as the long struggle over drilling in Bristol Bay proves, there are times when OCS development makes no economic or ecological sense.

Last year, the Congress almost settled the question of the Sale 92 leases and other problems with the OCS program. The House's version of the bill, HR 776, would have cancelled the Sale 92 leases beginning in FY 96, imposed a 10 year moratorium on OCS activity in the Planning area and allowed the use of a mix of cash and credits in a buyback program to fairly compensate the nine Sale 92 leaseholders.

Unfortunately, threats of budget sequestration and veto by the Bush Administration and OCS drilling proponents in the Senate prevented passage of the House's language. All conferees did agree, however, that the debate was pretty clear and that Congress believed that Bristol Bay and its wildlife and fisheries should not be threatened by oil drilling and should be protected in some manner.

We support H.R. 705 since it would immediately cancel the Sale 92 leases, provide flexibility to the Federal government and the leaseholders to arrange buyback options and place a moratorium on any consideration of new leases in the North Aleutian Basin until at least after the year 2001.

The Department of the Interior should be responsible for buying back the leases since they held a sale over the objections of the State of Alaska as expressed in the OCSLA Section 19 comments of then-Governor Sheffield in 1985. Fortunately, soon after the bids were opened and the leases sold in 1988 (after a 3-year delay in the courts due a legal challenge by the State of Alaska and fishing, Native and environmental groups) the Congress has protected the fisheries of Bristol Bay on a temporary basis by enacting four, successive one year moratoria on development of the leases.

Twenty-three leases were sold to nine companies in October 1988 for \$95,439,500. In March 1991 the Minerals Management Service, at the request of the House Interior Appropriations Subcommittee, prepared a report entitled "Estimated Costs to Government in the event of a Congressionally mandated Repurchase of Sale 92 leases, North Aleutian Basin, Alaska". MMS estimated the costs of a direct cash buyback of the bonus bids, rentals and direct lease expenses plus interest on September 30, 1994 (after 5 years of continuous suspension of the leases since October 1, 1989) to range from \$141 million (low case) to \$186 million (high case). However, since the interest rates have been on a steady decline both prior to and after the MMS report, the Coalition estimates the costs of a direct cash buyback on September 30, 1993 to be approximately \$130 million to \$140 million.

H.R. 705 would allow the use of royalty or rent credits in a buyback package as fair compensation in lieu of cash. We fully support this credits provision since we have already used such a system for a buyback of State oil leases in Kachemak Bay near Anchorage in 1976. Section 38 of the Alaska statutes provides for alternative methods of repurchasing state leases namely granting credits to be applied "against future lease bonus or rental payments, permit fees, royalties, or oil and gas taxes". This buyback in State waters was accomplished over a period of two to three years, and made full use of the variety of cash and credit options provided in the legislation.

### Closing Comments

H.R. 705, if adopted, would be the first OCS oil lease buyback in the history of the Congress. As I am sure you are aware, buybacks of leases off the coast of Florida and North Carolina are also under consideration. Opponents of buyback legislation argue that if one buyback is approved, it would be only the "tip of the iceberg" and that more buybacks would follow at great cost to the U.S. Treasury and to the offshore oil and gas industry.

That may be the result but such arguments miss the point. The Bristol Bay leases never should have been sold in the first place. The Federal government must now bear the responsibility and the financial burdens for a leasing policy that ignored the need to protect a valuable fishing industry based upon renewable resources and a bountiful marine ecosystem critical to hundreds of species of the North Pacific.

Equal weight must be given to the protection of environmental and renewable resources and oil and gas development in determining the national interest and weighing that interest against the interest of the states. Environmental studies for lease sales must be published and independently peer reviewed prior to a sale. Our experience in Bristol Bay proves that there needs to be a functioning, realistic consultation process effectively carried out by the Department of Interior with State and local governments and the affected user groups. Otherwise, public policy will be carried out in the courts rather than in Congress.

Thank you for this opportunity to comment.

### **Members of the Bristol Bay Buyback Coalition**

Association of Village Council Presidents  
Bristol Bay Coastal Resource Service Area  
Cenaliurrit Coastal Resource Service Area  
Greenpeace Alaska  
Northern Alaska Environmental Center  
Southwest Alaska Municipal Conference

Bering Sea Fishermen's Association  
Bristol Bay Longline and Gillnet Cooperative  
Egegik Setnetters Association  
Kuskokwim Fishermen's Cooperative  
Setnetters Association of Bristol Bay  
Western Alaska Cooperative Marketing Association  
Yukon-Kuskokwim Fisheries Task Force

Alaska Crab Coalition  
Alaska Independent Fishermen's Marketing Association  
Fishing Vessel Owners Association  
Pacific Seafood Processors Association

Bristol Bay Borough  
Bristol Bay Native Association  
Chognung, Ltd.  
Lake & Peninsula Borough  
Nunam Kitlutsisti, Inc.  
Trustees for Alaska

Bristol Bay Driftnetters Association  
Concerned Area M Fishermen  
Kokechik Fishermen's Association  
Qaluyaat Fishermen's Association  
United Fishermen of Alaska  
Western Alaska Salmon Coalition

Alaska Fishermen's Union  
Deep Sea Fishermen's Union / Pacific  
Midwater Trawlers Cooperative

JUN 2 1993

**NATIONAL OCEAN INDUSTRIES ASSOCIATION**

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Robert B. Stewart  
President

June 23, 1993

The Honorable Solomon P. Ortiz  
Chairman  
Subcommittee on Oceanography,  
Gulf of Mexico, and the  
Outer Continental Shelf  
575 Ford House Office Building  
Washington, D.C. 20515

Dear Chairman Ortiz:

Enclosed are answers to the written questions you asked me to respond to following the subcommittee's hearing on June 15. If you or Mr. Weldon or any other member of the subcommittee has further questions or would like further elaboration on these questions, please let me know.

On behalf of the members of the National Ocean Industries Association, thank you for inviting us to share our views on H.R. 705. Thanks also for the courtesies extended to me by you and your staff.

Sincerely,

Robert B. Stewart

Enclosures

## QUESTIONS PUT BY CHAIRMAN ORTIZ FOR ROBERT STEWART

1. Where should or will the money come from to either pay for the repurchase, or cover the loss of revenue due to the forgiveness of rents or royalties?

The money should be made available to the Secretary of the Interior through the normal budget and appropriations process. Authority to compensate lessees already exists under the OCS Lands Act.

If the lessees are successful in their litigation they would be compensated by the Federal Settlement Fund administered by the Department of Justice.

The loss of revenue due to forgiveness increases the longer these lessees go uncompensated. Some of the revenue loss might be made up for by holding additional lease sales in a variety of areas. It is also worth noting losses in revenue caused by falling lease bonus receipts are at least partially explainable by the loss of faith some operators have experienced because of these cancellations.

2. This proposed legislation would amend the OCS Lands Act. Do you feel that this amendment will help ensure that this situation is not repeated in the future? If not, what actions should we take?

This legislation authorizes cancellation but cannot assure that funds will be appropriated to compensate lessee. It amends the OCS Lands Act by lowering the standards that must be met before a lease can be cancelled. This does not solve the real problem, which is compensation, and would make future cancellations easier. If anything, this legislation might make a repetition of this situation more likely rather than less.

One thing Congress might consider as a way to mitigate this situation in the future would be to provide that a successful bidder at an OCS lease sale would not be required to actually pay the bid bonus until all necessary permits have been secured. In this way, if a drilling ban is imposed, the largest single component of damages would not have been suffered and a dramatically lower level of compensation would be appropriate.

3. Bristol Bay is one of three areas in which buybacks are being considered, what effect will this bill have on the other two areas?

The introduction of this legislation and the Subcommittee's hearing serve to underscore the existence of similar circumstances in the other two areas. The issue in all three areas is

compensation to operators who have had their leases rendered valueless by an act of the federal government.

4. What is the industry's position on deferred compensation? Is industry seeking additional compensation for the potential loss of revenue based on its resource estimates of the area? What impact will this legislation have on the current litigation brought by Conoco et. al.?

I have a very strong sense that industry would prefer prompt payment in cash. Compensation in these three areas has already been delayed for years. Attempts to further defer payment of that which is owed seems unfair.

While NOIA is not involved in the Conoco et. al. litigation, I am advised by one of the parties that plaintiffs are not seeking to recover damages based on estimated resource value.

I am unable to judge the impact of this legislation on the pending litigation.

5. Are there any mitigating techniques which could be used to make drilling environmentally acceptable?

The question seems to assume that drilling as a general proposition is environmentally unacceptable. This is a premise with which I cannot agree. The OCS industry's record in the U.S. and worldwide over a long period of time demonstrates our ability to operate in fragile, challenging and in some cases downright daunting circumstances. An examination of the industry's experience since the program began in 1954 coupled with a look at the technology and training in use might be the subject of a future subcommittee hearing. I would also suggest a look at the regulations we comply with and the inspection systems in place to assure compliance.

6. Do you feel that the oil and gas potential of Bristol Bay offsets the risk to the environment?

I can only repeat that this industry has shown itself fully capable of operating safely in sensitive environments. A good example lies off the coast of Texas where industry has operated safely for years in very close proximity to the Flower Garden Banks National Marine Sanctuary. The sanctuary contains the two northernmost coral reefs off our coasts. Their health has been closely monitored for years while intense oil and gas activity has taken place in the area. The reefs continue to enjoy robust good health.

## QUESTIONS PUT BY REPRESENTATIVE CURT WELDON FOR ROBERT STEWART

1. Do you feel that the compensation provision included in the Outer Continental Shelf Lands Act is feasible?

There is nothing fundamentally wrong with the compensation provision of the OCS Lands Act. The problem is that Congress, having rendered leases in Bristol Bay, Alaska, off the coasts of North Carolina and southwest Florida valueless, has failed to accept responsibility for its actions by appropriating funds necessary to compensate the lessees.

2. As you are well aware, there are currently two other areas in the U.S. that are also off limits for drilling activity. Do you feel that if enacted, H.R. 705 would affect the fate of these two other lease areas? If so why and how? If not, why are these two areas so different that they also do not warrant a "taking"?

NOIA believes there is no distinction among the three areas where drilling has been legislatively proscribed. In each area the value of the leases has been reduced to zero and in each area the federal government has so far failed to take any concrete step in the direction of providing compensation for the lessees.

3. Does NOIA feel that the Federal government should be responsible for repurchasing leases when drilling activity is suspended for various reasons? If not, why?

The responsibility of the federal government to repurchase leases where drilling activity has been suspended depends on the reason for the suspension. If a lease is suspended by the Secretary of the Interior because the lease owner fails to pay rents or because the lessee files a plan of exploration that does not meet the requirements of the regulations, no repurchase would be called for because the lessee caused the suspension. On the other hand, where the lessee has acted properly and has met the requirements of the statutes and regulations and Congress nevertheless legislatively prevents the lessee from exploring and possibly developing the hydrocarbon reserves on the lease, the federal government clearly has the responsibility to repurchase the lease.

# BRISTOL BAY BUYBACK COALITION

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July 13, 1993

Written response to questions of the Honorable Curt Weldon of the Subcommittee on Oceanography, Outer Continental Shelf and the Gulf of Mexico

Re: H.R. 705, Bristol Bay Fisheries Protection Act

Responses by Daniel E. Albrecht, Coalition Coordinator

No, the compensation provisions included in OCSLA are inadequate since they do not give the Congress enough flexibility to devise creative repurchase programs such as forgiveness of rents and royalties or incentives for exploration in OCS areas of high reserves potential with less risk to the environment.

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Both the south Florida leases and the North Carolina leases are currently prevented from exploration due to leaseholders' failure to satisfy the requirements of the Coastal Zone Management Act. Companies that bought these leases knew that they would have to develop a sound CZM plan in order to develop the leases. Leaseholders in these two areas may not be entitled to compensation since there was no "taking" since they knew beforehand that they would not be able to develop the leases and get a return on their investment unless they complied with State and Federal laws.

Both these areas were held up from development much farther along in the process whereas the Bristol Bay leases were fought at every juncture by the State and no activity other than purchase of the lease was made by the companies. Although the state governments of North Carolina and Florida had objections to leasing near their shores, they never filed litigation to stop or delay the sale of the leases. In Bristol Bay no drilling permits were applied for, no development plans made. The companies bought leases that were predicated on high oil prices, weak requirements to handle oil spill events and an unrealistic faith in the safety of oil transport or cleanup technology.

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No, the U.S. Department of the Interior did not weigh all the facts when deciding to let Sale 92. Inadequate attention was paid at the time of the drafting of the EIS to the growth potential of the Bering Sea fishing industry despite the fact that other U.S. fisheries were in steep decline while worldwide seafood consumption was continuing to grow. The EIS also placed too much faith in oil spill cleanup technology and compared "apples to oranges" by basing so much of its assumptions about OCS development and oil spill response in Sale 92 with development and response in the Gulf of Mexico, two vastly different bodies of waters with different climates and transportation infrastructures.

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My point noting that opponents of the Bristol Bay buyback refer to it as the "tip of the iceberg" is not to deny that buybacks in Florida and North Carolina may take place. Rather, my point is that whether Bristol Bay is the first and only buyback or the first of a dozen lease buybacks is irrelevant. The case for the Bristol Bay buyback stands on its own merits



**Responses to Chairman Ortiz**  
**July 13, 1993**  
**page two**

4) Prepositioning equipment and personnel on the south side of the Alaska Peninsula sufficient to handle an oil spill equal to the maximum capacity of the largest tanker likely to operate in the area. Prepositioning of equipment and personnel on the north shore of the Alaska Peninsula sufficient to contain a well blowout or pipeline rupture discharging 11,000 BPD; containment sufficient to prevent contact with the shoreline. This would only be a first step towards perhaps gaining the approval of local residents if development were inevitable.

5) Yes, the environmental risks outweigh the value of the potential petroleum production within Bristol Bay. We are not alone in this assessment either. The National Marine Fisheries Service considers the eastern Bering Sea to be the single most productive offshore fishery and ecosystem in the U.S.. An oil spill would not only cripple the Bering Sea fishing industry at the time of the event but would have repercussions for years to come on the market price of Alaska's seafood as well as safety concerns for American consumers as well as local Native communities who rely on the region for subsistence harvests of fish, mammals and waterfowl.

Bristol Bay is estimated to contain only 1/10th of 1 percent of the nation's energy reserves. The sale was predicated on the basis of the artificially high oil prices of the late 1970s and early 1980s. Even if prices were to rebound, the costs of production (due to the region's remote location and the necessary oil spill response capabilities) would be extraordinarily high.

The fisheries of the Bristol Bay region however are highly productive and are anticipated to remain so for years to come. They provide over 10,000 jobs for a wide variety of Americans and supply America and the world with nutritious seafood.

## BRISTOL BAY BUYBACK COALITION


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July 13, 1993

Written response to questions of the Honorable Solomon P. Ortiz, chairman of the Subcommittee on Oceanography, Outer Continental Shelf and the Gulf of Mexico

Re: H.R. 705

**Responses by Daniel E. Albrecht, Coalition Coordinator**



1) All funds for repurchase first of all should come from the Federal treasury. Funds could come from such sources as the Lands and Water Conservation Funds; earmarking of tax revenue from the oil and gas industry or the Claims and Settlements Fund. Payments could also be delayed to occur after 5 years from now or to be paid back over a 10 or 20 year period.

Another option would be to give the leaseholders' credits towards bids on properties owned by the Resolution Trust Corporation. Cook Inlet Region Inc. (an Alaska Native Corporation) received such credits as compensation for lands owed to them under the ANCSA act of 1971.

2) H.R. 705 includes some key changes to OCSLA which will make buybacks occur in a more efficient and timely manner (by reducing to two years the required time of suspension prior to a buyback) and also will give the public a greater role in OCS development by granting Congress the authority to cancel leases not just the Secretary of the Interior.

H.R. 705, in its present form, however will not ensure that this situation does not occur in the future. Additional actions are necessary and indeed were contained in H.R. 776, the House's version of last year's energy bill. These include:

- \* stipulating that OCS leases can be cancelled if they harm or pose serious threats to environmental resources of substantial value

- \* strengthening the role of state and local governments in the OCS lease process so that contentious battles over OCS development can be avoided. This would entail giving more weight to the OCSLA Sec. 19 comments of the Governor as well as local CZM plans.

3) The current state of oil spill cleanup technology falls far short of what would be needed in the event of oil development in the North Aleutian Basin. The Coalition recognizes that well blowouts are a rare occurrence but the main reason we feel that oil development is not justifiable is that we know that the Aleutian Islands and Bristol Bay is an extremely dangerous body of water where high winds and rough seas are the norm. Skimmers and booms are only useful in seas below 3 feet. Dispersants or burning require good flying conditions which are also infrequent in the region.

Tankers loading on the south shore of the Alaska Peninsula would also fare no better perhaps even worse since the waters around Kodiak Island are also dangerous. While a spill occurring in this area would not impact the Bristol Bay fishery as rapidly, valuable fisheries and wildlife in the Kodiak and Shumagin Islands would be devastated and ocean currents would still carry oil north around the Alaska Peninsula and in the same trajectory as a spill in the Sale 92 area.

OCS development in the Gulf of Mexico or Cook Inlet for that matter is situated close to major transportation centers where equipment and personnel can be rapidly marshalled to confront a spill event. While equipment could be stockpiled near the lease area, personnel cannot and would be subject to the whims of Mother Nature should they have to reach their equipment.

## ENCLOSURE



## LAWS OF ALASKA

1976

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Chapter No.

HCS CSSB 720 AM H re-engrossed

113

## AN ACT

Relating to the reacquisition of oil and gas leasehold interests in Kachemak Bay; and providing for an effective date.

## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 38.05 is amended by adding a new section to read:

Sec. 38.05.184. LIMITATION ON OIL AND GAS LEASES IN CERTAIN AREAS, AND REACQUISITION OF LEASES. (a) The legislature finds that Kachemak Bay is an area of extraordinary abundance and diversity of marine life that has provided, and will continue to provide in the future, a basis for one of the state's most important commercial fisheries; that recent information discloses that even minute quantities of oil released into the marine environment may be harmful to the larval forms of crabs and other marine life and that the existence of gyral currents within the bay may increase the likelihood of oil coming into contact with these valuable commercial fish and shellfish species; and that therefore oil and gas development in the bay, at this time, presents an undue hazard to this valuable state renewable resource.

(b) No additional oil or gas leases may be issued by the Department of Natural Resources or any other state agency for the exploration for or the development or production of oil and gas on state-owned land and waters seaward of the mean higher high water line, beginning at Anchor Point; then around the perimeter of Kachemak Bay, to Point Pogibah; then west to the three mile limit of state land and waters; then north to a point three miles west of Anchor Point; then east to the mean higher high water line of Anchor Point, the point of beginning.

(c) The commissioner of natural resources may enter into negotiations to reacquire by purchase in the name of

## Chapter 113

the state, title to or accountable interests in oil or gas leases within the boundaries described in (b) of this section which were issued before the effective date of this Act.

(d) In lieu of cash payment for a negotiated purchase of a leasehold interest, the commissioner may authorize a credit of the purchase price plus interest at the rate prescribed by AS 09.30.070 to be granted the seller to be applied against future lease bonus or rental payments, permit fees, royalties, or oil and gas taxes which may become owing on new production from other leases or property held by the seller for oil and gas development. The commissioner may also negotiate to reimburse in like manner by credit provision the full bonus paid by the lessee to the state plus a reasonable amount to compensate the lessee for expenses and other costs incurred by the lessee.

(e) For a period of one year from the effective date of this section, or until the adjournment of the First Session of the Tenth Alaska Legislature, whichever period is longer, no drilling activities to explore or develop any existing state oil and gas leases in the bay are permitted and the commissioner shall suspend drilling activities to explore or develop any existing state oil and gas leases in the bay. The purpose of this moratorium on exploration and development is to (1) permit the Department of Fish and Game a reasonable time to develop plans to insure protection for the living resources of the bay from possible pollution incidental to drilling activities; and (2) permit the commissioner of natural resources a reasonable period to negotiate for the repurchase of the leases under (c) of this section. The lease period for any existing oil and gas leases in Kachemak Bay shall be extended by the commissioner of the Department of Natural Resources for the period of this moratorium.

(f) In the event the commissioner of natural resources is unable to negotiate a satisfactory price for repurchase of the leases under (c) of this section, he may at the time the moratorium on exploration and development expires acquire all title to or interests in said oil or gas leases through the exercise of the power of eminent domain.

(g) In the event the commissioner determines to exercise the power of eminent domain, such action must be initiated in the courts within 30 days after the moratorium period provided for under (e) of this section. In the event that the commissioner does not exercise the power of eminent domain within the 30-day period, lessees shall have the immediate right under the terms of the lease to explore, operate, and produce from the lease of leases, including the right of reasonable access to and from the lease sites and the transportation of production from the lease to a shore-based facility or to a refinery or other market, until full reacquisition of the lease by the state through negotiations.

\* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(e).

## STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

WALTER J. HICKEL, GOVERNOR

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 JUNEAU, ALASKA 99802-5526  
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July 28, 1993

Honorable Solomon P. Ortiz, Chairman  
 Subcommittee on Oceanography, Gulf of Mexico,  
 and the Outer Continental Shelf  
 Committee on Merchant Marine and Fisheries  
 U.S. House of Representatives  
 Longworth House Office Building, Room 1334  
 Washington, DC 20515-6230

Dear Mr. Ortiz:

In response to your letter of June 15, I offer the following answers to the questions raised by the Subcommittee regarding my testimony on H.R. 705.

## PREPARED QUESTIONS FOR THE HONORABLE CURT WELDON

1. Do you think the compensation provisions included in the Outer Continental Shelf Lands Act (OCSLA) are feasible? Yes, I believe the compensation provisions in H.R. 705 are feasible. Another alternative that the Subcommittee may want to consider is giving lessees "credits" for their leases in the North Aleutian Basin (NAB), which could be applied to acquiring leases in other areas of the Outer Continental Shelf (OCS).
2. Will passage of H.R. 705 affect the fate of other areas in the U.S. that are also off limits to drilling? If so, why? If not, why are these other areas different? If enacted, H.R. 705 may be viewed by some as a precedent and used to bolster proposals to repurchase leases in other OCS areas. However, the validity of using this legislation as a precedent will depend upon whether the situations are comparable. Although I am aware of the other drilling moratoriums, I am not familiar with the fish and wildlife values, hydrocarbon potential, or other specific issues associated with leasing in these areas. Consequently, I cannot comment on whether such a comparison is justified.
3. Did the Department of the Interior (DOI) take into account the issues covered in my testimony in the final Environmental Impact Statement (EIS)? If so, why do I believe that the lease sale moved ahead despite the fact that the region has such a high concentration of fish and wildlife resources? For the most part, the final EIS did recognize the fish and

wildlife values of Bristol Bay. However, DOI and the state were never able to reach agreement on whether leasing in this area provided a reasonable balance between State and national interests. In the state's view, DOI underestimated the environmental risk of oil development in this area, while exaggerating the potential economic benefit to the nation.

Although the state disagreed with DOI's conclusions, there is no administrative or legal mechanism to stop a sale from proceeding under these circumstances. Section 19 (d) of the OCSLA specifically states that, "The Secretary's determination . . . shall be final and shall not, alone, be a basis for invalidation of a proposed lease sale . . . unless found to be arbitrary and capricious." In other words, as long as DOI follows appropriate procedures, states cannot overturn a lease sale decision, regardless of whether the decision is ill-advised as long as procedural criteria are met.

4. Why did the State of Alaska lose its case to protect Bristol Bay? Do you feel that all of the issues were adequately examined in this case? Yes, I believe that the issues were adequately examined. However, as noted above, the OCSLA does not provide states with a mechanism to successfully challenge a decision based on substantive issues. This is a major flaw in the legislation, as it precludes any kind of "checks and balances" based on the merits of state concerns.
5. Should the State of Alaska share in the cost of repurchasing Bristol Bay leases? No, I do not feel the state should share in this cost. As noted in my testimony, the State of Alaska spent substantial financial resources and nearly 20 years trying to convince DOI not to lease the NAB. We exhausted every administrative and legal means of preventing OCS leasing in this area. Consequently, I do not feel that it should be incumbent upon the state to help repurchase the leases that we consistently fought against.

#### ADDITIONAL QUESTIONS

6. Where should or will the money come from to either pay for the repurchase, or cover the loss of revenue due to the forgiveness of rents or royalties? Should the State of Alaska contribute to any buyback? If so, should the State have any rights to the leases? I would defer to the Congress to determine the best economic mechanism to repurchase Sale 92 leases. Although I recognize that Federal revenue is very limited, I continue to believe that protecting Bristol Bay's biological resources warrants the expenditure. For the reasons stated above, I do not believe that the State of Alaska should contribute to the buyback.
7. Do you feel that H.R. 705 will help prevent a Sale 92 situation from happening again? If not, what actions should we take? As noted in my testimony, the proposed legislation is important to conservation of world renowned fish and wildlife resources. However, the amendment will not preclude similar situations from happening again. In order to prevent such a reoccurrence, the OCSLA must be amended to either: (a) provide states with a

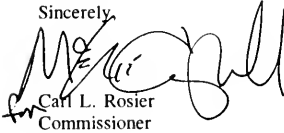
July 28, 1993

stronger voice in OCS leasing decisions; or (b) at least allow states to legally challenge a lease sale decision based on substantive, rather than just procedural, grounds.

8. Can you explain how Alaska repurchased state leases using a credit system? The process for repurchasing state leases in Kachemak Bay was straight forward. The companies and the state agreed that the original cost of the leases plus associated leasing costs and interest was fair compensation. The companies deducted this amount from royalty payments and rent from the other leases due to the state (see enclosure).
9. Are there any mitigating techniques which could be used to make drilling environmentally acceptable? Certainly there are ways to reduce the likelihood of an oil spills, but there is no way to eliminate the possibility of a spill. Human error, equipment malfunctions, and other factors that cause spills cannot be completely eliminated. Consequently, there will always be an element of risk associated with oil exploration and development. This risk must be weighed against the potential economic benefit of industrial activities. In a limited number of specific areas, like Bristol Bay, the risk is simply too great.

Again, thank you for the opportunity to testify on behalf of H.R. 705. If you or the other Subcommittee members have any additional questions, please do not hesitate to contact me.

Sincerely,



Carl L. Rosier  
Commissioner

Enclosure

cc: Frank Rue  
Lance Trasky



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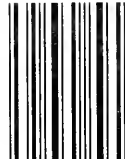




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